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* **HIGH COURT OF DELHI : NEW DELHI**

\+ **W.P.(C) 5677/2007**

% Decided on: September 18, 2007

M/S EUROASIA GLOBAL THR. ITS PROPERIETOR
SANGIT K.K.AGRAWAL ..... Petitioner
Through Mr.Pradeep Jain with
Mr.Prem Ranjan Jha, Mr.Sidharth,
Advocates

versus

COMMISSIONER OF CUSTOMS INLAND
CONTAINER DEPOT TUGHLAKABAD,
NEW DELHI & ANR. ..... Respondents
Through Mr.Sanjay Katyal with Mr.P.S.
Gulati, Advocates

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Signature Not Verified
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

ORDER

CM No. 10529/2007

By this application under Section 151 of the Code of Civil Procedure the Petitioner seeks release of goods imported under bill of entry no. 583202 dated 24th April, 2007 on a value of US$ 1.90 per meter pending adjudication; a direction to Respondent No.2 to release the seized Indian currency of Rs.23.90 lakhs and to prohibit the said Respondent from requiring the Petitioner to maintain a minimum balance of Rs. 4.89 lakhs in the bank accounts of the Petitioner.

2. The case of the Petitioner is that he is a regular importer of PU coated fabric. According to the Petitioner, he has been importing this fabric of 1.0 m.m. + - 3% thickness over a period of time and it is stated that over 300 such imports have been made from time to time.

3. When the Petitioner imported the goods under the present bill of entry bearing number 583202 at the rate of US$ 1.55 per meter, the Respondents took action to seize these goods.

4. Earlier, the Respondents had searched the premises of the Petitioner in respect of imports made of PU coated fabric which were cleared by the Customs authorities. During the search, the Respondents seized cash worth Rs. 23.90 lakhs and also issued orders to the banks of the Petitioner to ensure that the Petitioner maintains a minimum balance of Rs.4.89 lakhs, the total amount, according to the Respondents, representing the sale proceeds of smuggled goods.

5. Insofar as the first prayer is concerned, namely, release of the goods at the rate of US$ 1.90 per meter, although the Petitioner has stated in the bill of entry that the value of goods is US$ 1.55 per meter, learned counsel for the Petitioner states that without prejudice to his rights and contentions he is prepared to clear the goods at the rate of US$ 1.90 per meter.

6. According to the Respondents, the value of the goods is US$ 5.50 per meter and the differential duty comes to Rs.12,08,391/-.

7. It appears that there are two controversies that have arisen in this regard. The first controversy is with regard to the thickness of the imported

goods. According to the Petitioner, the thickness of the imported material is 1.0 m.m. +- 3%, while according to the Respondents the thickness is much more and therefore, the value of the imported goods is much more.

8. We may note that the bill of entry for clearance of the goods was filed on 24th April, 2007. The Respondents on their own showing did not take any action to ascertain the thickness of the goods until 13th June, 2007, when the matter was referred to the Central Research Chemical Laboratory ('CRCL'). We have been told by learned counsel for the Respondents that certain procedural formalities were not complied with when the samples were taken and therefore, fresh samples were taken in July, 2007 and the report from the CRCL is still awaited. In the absence of any material to the contrary, we have no option but to believe the Petitioner when it says that the thickness of the imported PU coated fabric is 1.0 m.m. +- 3%.

9. We may note our surprise that even though about five months have gone by, the Respondents have not been able to ascertain the thickness of

the imported goods which itself may lead to other complications such as charges for warehousing, etc. But we are not presently concerned with that.

10. The second controversy that has arisen in this regard is whether the Respondents have correctly determined the value of the imported goods at the rate of US$ 5.50 per meter.

11. Learned counsel for the Petitioner submitted that apart from a large number of imports made by the Petitioner itself on a value of US$ 1.55 per meter which have been cleared by the Customs authorities in ICD, Tughlaqabad at US$ 1.90 per meter, a large number of other importers have made imports from 3rd October, 2006 till 24th April, 2007, and PU coated fabrics of 1.00 m.m. thickness have been cleared by the Customs authorities at US$ 1.90 per meter. It is submitted by learned counsel that under these circumstances, there is no reason why the imports made by the Petitioner should be valued at US$ 5.50 per meter.

12. Apart from this, learned counsel for the Petitioner has drawn our attention to a circular dated 30th August, 2005, issued by the Customs

authorities in Mumbai wherein PU coated fabric of thickness 1.0 mm has been valued at US$ 1.90 per meter.

13. In view of the above, it appears to us that in the absence of any determination having been made by the Respondents for almost five months about the thickness of the imported material, we have to proceed on the basis of the thickness given by the Petitioner, that is, the PU coated fabric has a thickness of 1.0 mm, + - 3%. The material placed on record regarding the value of the goods, that is, imports by other parties in ICD, Tughlaqabad and the circular issued by the Commissioner of Customs (Import), Mumbai, suggests that PU coated fabric of thickness 1.0 m.m. +- 3% must be valued at US$ 1.90 per meter.

14. Under the circumstances, we allow the first prayer of the Petitioner in the application and direct the Respondents to release PU coated fabric imported by the Petitioner under bill of entry number 583202 on a value of US$ 1.90 per meter. Of course, this will be provisional and pending adjudication proceedings.

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15. Insofar as the differential amount of duty is concerned, that is, on US$ 5.50 per meter claimed by the Respondents and US$ 1.90 per meter under which clearance is sought by the Petitioner, learned counsel for the Petitioner states that his client will furnish a bond as per Form B11 to the satisfaction of the concerned Assistant Commissioner of Customs along with a bank guarantee of 20% of the differential duty. Upon furnishing of the bond and acceptance of the bank guarantee, the Assistant Commissioner should take immediate steps to have the goods released.

16. Insofar as the second question is concerned, that is, for the release of an amount of Rs.23.90 seized by the Respondents and the requirement that the Petitioner should keep a minimum balance of Rs.4.89 lakh in its bank accounts, learned counsel for the Respondents has explained that the source of power for the seizure emanates from the reason to believe that has been placed on record at page 52 of the paper book read with Section 2(22), Section 110 and Section 121 of the Customs Act, 1962.

17. The contention of learned counsel for the Respondents is that the

Indian currency represents the sale proceeds from smuggled goods and therefore, the Respondents are well within their rights to seize the currency.

18. Upon going through the reason to believe that has been recorded by the authorities on 10th January, 2007 (page 52 of the paper book), we find that the sale proceeds are of imported goods and there is nothing to suggest that the goods are smuggled goods. In fact, the sale proceeds are in respect of goods imported by the Petitioner and cleared by the Customs authorities from time to time. These goods cannot be said to be smuggled goods.

19. Even though there is a dispute in respect of the correct value of the goods, that does not necessarily classify the goods as smuggled goods. The goods were imported by the Petitioner in accordance with law and were cleared by the Customs authorities in accordance with law. The goods may have been grossly underinvoiced but that is a different matter altogether and will have to be decided by the authorities as and when they initiate adjudication proceedings against the Petitioner.

20. Learned counsel for the Respondents also drew our attention to

Section 125 of the Customs Act and pointed out that goods imported by the Petitioner are not notified goods and therefore, the burden is on the Respondents to prove that the goods imported by the Petitioner are smuggled goods. It appears to us that at best the goods imported by the Respondents can be said to be goods which are grossly underinvoiced and sold in the market. Even if that position is accepted, it would not entitle the Respondents to seize the Indian currency representing the sale price because the currency is not relatable to the sale proceeds of smuggled goods.

21. Learned counsel for the Respondents relied upon ***Tripta Sharma Vs. Commissioner of Customs, New Delhi***, ***[2002] 145 DLT 519,*** wherein a prayer was made for release of seized currency of the petitioner therein. The Division Bench of this Court rejected the contention of the petitioner in that case because there was nothing to show that the petitioner therein claimed ownership of the Indian currency. That is not the position insofar as the present case is concerned, where the Petitioner clearly claims ownership of the Indian currency. The decision relied upon by

learned counsel for the Respondents is, therefore, inapplicable to the facts of the present case.

22. Learned counsel for the Petitioner relied upon ***Dr.Pratap Singh Vs. Director of Enforcement, AIR 1985 SC 989*** to contend that the reason to believe is not synonymous with subjective satisfaction and the Court can examine whether the reason to believe is held in good faith.

23. We do not intend to go into this question at this stage because adjudication proceedings have not yet been initiated against the Petitioner.

24. For the reasons mentioned above, we are of the view that the Petitioner is also entitled to the second prayer made, namely, for the release of Indian currency of Rs. 23.90 lakhs as well as freedom from the requirement to keep a minimum balance amount of R.4.89 lakhs in the bank accounts of the Petitioner.

25. However, so far as to restituting the Respondents in case the adjudication proceedings are terminated against the Petitioner, learned

counsel for the Petitioner states that the authorized representative of his client will file an undertaking in this Court within a week stating therein that in case the adjudication proceedings are decided against the Petitioner, he will deposit in this Court Rs. 23.90 lakhs as well as Rs. 4.89 lakhs within a week thereafter.

26. It has been made clear to learned counsel for the Petitioner that in the event the undertaking is violated, the authorised representative of the Petitioner will be liable for proceedings under the Contempt of Courts Act.

27. The application is disposed of as above.

28. W.P.(C) 5677/2007

The prayers that have been made by the Petitioner in the Writ Petition are more or less similar to the prayers made in the interim application that we have dealt with above. The prayers in the writ petition are :

> "(i) to issue a writ of certiorari, order, direction thereby quashing the impugned communication dated 23.5.2007 issued by the Respondent no.2.
>
> (ii) to issue a writ of mandamus order, direction directing the

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Respondent no. 2 to permit release of the goods of the Petitioner under bill of entry no. 583202 dated 2.4.2007 on the value of US$ 1.90 per meter pending adjudication.

(iii) to issue a writ of mandamus order, direction directing the respondent no. 2 to release the currency of Rs. 23.90 lakhs seized from the Petitioner's premises vide panchnama dated 10.1.2007 and also to release the currency of Rs. 4.89 lakhs which has been withheld by the Respondent no.2 lying the Petitioner's bank accounts.

(iv) to pass such order or further order/s which the Hon'ble Court may deem fit and proper."

29. Since we have disposed of similar prayers made in the interim application, nothing further survives in the Writ Petition and therefore that too is disposed of in terms of the order passed in the interim application.

MADAN B. LOKUR, J

SEPTEMBER 18, 2007 **S. MURALIDHAR, J**
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-Fresh CM 17161/07 - for direction & Compliance of order dt 18.9.07.